

FILED

JUN 8 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

OTUMFOE JAY CARPENTER,

Defendant - Appellant.

No. 05-30332

D.C. No. CR-05-00064-01-RSL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Submitted June 5, 2006^{**}
Seattle, Washington

Before: BEEZER, TALLMAN, and BYBEE, Circuit Judges.

The facts of this case are known to the parties.

Defendant-appellant Carpenter challenges the district court's refusal to
excise certain statements from the pre-sentence report that pertain to the gun found

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

in his couch cushions on the ground that there was insufficient evidence to support their inclusion. Carpenter was seated on the couch when the police entered his apartment, the police recovered ammunition for the gun from Carpenter's apartment, and Carpenter admitted to possessing the gun in written statements that were submitted to the district court. This constitutes sufficient evidence to support the district court's decision to adopt the factual findings of the pre-sentence report.

Nor did the district court violate Federal Rule of Criminal Procedure 32 by failing to make written findings on whether the gun was in Carpenter's possession. A district court does not need to make written findings resolving any disputed aspect of the pre-sentence report if it determines "that a ruling is unnecessary . . . because the court will not consider the matter in sentencing." FED. R. CRIM. P. 32(i)(3)(B). The district court explicitly stated that it was not considering the presence of the gun in determining Carpenter's sentence. Nor did the district court abuse its discretion by refusing to hold an evidentiary hearing on the issue of whether Carpenter possessed the gun. *Cf. United States v. Real-Hernandez*, 90 F.3d 356, 362 (9th Cir. 1996).

All of Carpenter's other arguments have been considered and they are without merit.

AFFIRMED.